

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

Tyrone Bowers,

Plaintiff,

v.

ITT Educational Services, Inc. d/b/a ITT
Technical Institute,

Defendant.

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: Civil Action No.: _____
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COMPLAINT

For this Complaint, the Plaintiff, Tyrone Bowers, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et. seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendant transacts business here, Plaintiff resides in this judicial district, and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

3. The Plaintiff, Tyrone Bowers ("Plaintiff"), is an adult individual residing in Philadelphia, Pennsylvania, and is a "person" as the term is defined by 47 U.S.C.A. § 153(39).
4. The Defendant, ITT Educational Services, Inc. d/b/a ITT Technical Institute ("ITT"), is a Indiana business entity with an address of 13000 North Meridian Street, Carmel, Indiana 46032, and is a "person" as the term is defined by 47 U.S.C.A. § 153(39).

FACTS

5. Beginning around March 2014, ITT started calling Plaintiff's cellular telephone, number (267) XXX-7525.

6. At all times mentioned herein, ITT contacted Plaintiff using an automated telephone dialer system ("ATDS" or "predictive dialer") and/or by using an artificial or prerecorded voice.

7. Plaintiff has no prior business relationship with ITT and never provided his consent to be contacted by means of an automated system on his cell phone.

8. When Plaintiff answered the ATDS calls, he experienced an extended period of silence before one of ITT's live representatives came on the line. When one of ITT's representative came on the line, they each said, "This is ITT Tech, we are calling to follow up."

9. On several occasion, Plaintiff requested ITT cease calling his cell phone.

10. Nonetheless, ITT continued to place at least twenty-six (26) additional ATDS calls to Plaintiff's cell phone, in an effort to solicit their services.

COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, ET SEQ.**

11. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

12. At all times mentioned herein and within the last four years, Defendant called Plaintiff on his cellular telephone using an ATDS or predictive dialer and/or by using a prerecorded or artificial voice.

13. In expanding on the prohibitions of the TCPA, the Federal Communications Commission (FCC) defines a Predictive Dialer as "a dialing system that automatically dials consumers' telephone numbers in a manner that "predicts" the time when a consumer will

answer the phone and a [representative] will be available to take the call...”2003 TCPA Order, 18 FCC 36 Rcd 14022. The FCC explains that if a representative is not “free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear ‘dead air’ or a dial tone, causing frustration.” *Id.* In addition, the TCPA places prohibitions on companies that “abandon” calls by setting “the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned.” *Id.*

14. Defendant’s telephone systems have all the earmarks of a predictive dialer. Often times when Defendant called Plaintiff, he was met with a period of silence before Defendant’s telephone system would connect him to live person.

15. Upon information and belief, Defendant’s predictive dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

16. Plaintiff did not provide and/or revoked his consent to be contacted on his cellular telephone, and in fact instructed Defendant on at least one occasion to stop all calls to him and cease calling his cellular telephone.

17. Defendant continued to place automated calls to Plaintiff’s cellular telephone after being advised multiple times by Plaintiff that he disputed the Debt and knowing there was no consent to continue the calls. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

18. The telephone number called by Defendant was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

19. The calls from Defendant to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

20. Each of the aforementioned calls made by Defendant constitutes a violation of the TCPA.

21. As a result of each call made in negligent violation of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

22. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the Defendant:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(1)(A);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: July 16, 2014

Respectfully submitted,

By /s/ JBB8445

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